



UNITED STATES DEPARTMENT OF COMMERCE

Patent and Trademark Offic

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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/147,405 04/01/99 GUSS

B REF/GUSS/P33

BACON & THOMAS
625 SLATERS LANE 4TH FLOOR
ALEXANDRIA VA 22314-1176

HM22/1003

EXAMINER

DEV1,S

ART UNIT	PAPER NUMBER
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1645

DATE MAILED:

10/03/01

20

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary

Application No. 09/147,405	Applicant(s) Guss et al.	Examiner S. Devi, Ph.D.
Art Unit 1645		

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE three MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on Jul 20, 2001.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-29 is/are pending in the application.
- 4a) Of the above, claim(s) 2-24 and 26-29 is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1 and 25 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claims _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are objected to by the Examiner.
- 11) The proposed drawing correction filed on _____ is: a) approved b) disapproved.
- 12) The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

- 13) Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

a) All b) Some* c) None of:

1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. _____.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

*See the attached detailed Office action for a list of the certified copies not received.

- 14) Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

- 15) Notice of References Cited (PTO-892) 18) Interview Summary (PTO-413) Paper No(s). _____
- 16) Notice of Draftsperson's Patent Drawing Review (PTO-948) 19) Notice of Informal Patent Application (PTO-152)
- 17) Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____ 20) Other: _____

DETAILED ACTION

Applicants' Amendment

- 1) Acknowledgment is made of Applicants' amendment filed 07/25/2001 (paper no. 19) in response to the non-final Office Action mailed 04/27/01 (paper no. 18). With this, Applicants have amended the specification.

Status of Claims

- 2) Claims 1 and 25 have been amended via the amendment filed 07/25/2001.
Claims 1-29 are pending.
Claims 1 and 25 are under examination.

Prior Citation of Title 35 Sections

- 3) The text of those sections of Title 35 U.S. Code not included in this action can be found in a prior Office Action.

Prior Citation of References

- 4) The references cited or used as prior art in support of one or more rejections in the instant Office Action and not included on an attached form PTO-892 or form PTO-1449 have been previously cited and made of record.

Objection(s) Withdrawn

- 5) The objection to claim 1 made in paragraph 8(a) of the Office Action mailed 04/27/01 (paper no. 18) is withdrawn in light of Applicants' amendment to the claim.
- 6) The objection to claim 1 made in paragraph 8(b) of the Office Action mailed 04/27/01 (paper no. 18) is withdrawn in light of Applicants' amendment to the claim.
- 7) The objection to claim 1 made in paragraph 8(c) of the Office Action mailed 04/27/01 (paper no. 18) is withdrawn in light of Applicants' amendment to the claim.
- 8) The objection to claim 1 made in paragraph 8(d) of the Office Action mailed 04/27/01 (paper no. 18) is withdrawn in light of Applicants' amendment to the claim.
- 9) The objection to the specification made in paragraph 9 of the Office Action mailed 04/27/01 (paper no. 18) is withdrawn in light of Applicants' amendments to the specification.
- 10) The objection to the specification made in paragraph 10 of the Office Action mailed

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04/27/01 (paper no. 18) is withdrawn in light of Applicants' amendments to the specification.

11) The objection to the abstract made in paragraph 11 of the Office Action mailed 04/27/01 (paper no. 18) is withdrawn in light of Applicants' amendments to the abstract.

12) The rejection of claims 1 and 25 made by the previous Examiner in paragraphs 7 and 8 of the Office Action mailed 10/03/00 (paper no. 16) under 35 U.S.C. § 102(b) as being anticipated by Timmerman *et al.* (*Infect. Immun.* 59: 4187-4192, 1991) and maintained in paragraph 7 of the Office Action mailed 04/27/01 (paper no. 18), is withdrawn in light of Applicants' amendment to the base claim.

New Rejection(s)

Applicants are asked to note the new rejection(s) made in this Office Action. Applicants' amendments necessitated the new ground(s) of rejection presented in this Office Action.

Rejection(s) under 35 U.S.C § 112, First Paragraph

13) Claims 1 and 25 are rejected under 35 § U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

Claim 1 now includes the newly added limitation: "substantial" fibrinogen binding activity. However, there appears to be no descriptive support in the instant specification for this added limitation. Applicants have not pointed to any specific part(s) of the specification that provides descriptive support for all the added limitation. An amendment to the claim must have antecedent basis in the original disclosure. See 37 CFR 1.121. Therefore, the new limitation in the claim is considered to be new matter. *In re Rasmussen*, 650 F2d 1212 (CCPA, 1981). New matter includes not only the addition of wholly unsupported subject matter but also, adding specific percentages or compounds after a broader original disclosure, or even omission of a step from a method. See M.P.E.P. 608.04 to 608.04(c).

Applicants are respectfully requested to point to the descriptive support in specific part(s) of the disclosure as filed, for the newly added limitation, or to remove the new matter from the claim.

Rejection under 35 U.S.C. 112, Second paragraph

14) Claims 1 and 25 are rejected under 35 § U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicants regard as the invention.

(a) Claim 1 is vague and indefinite in the recitation “substantial fibrinogen binding activity”, because it is unclear what is encompassed in the term “substantial”. It is unclear what degree of fibrinogen binding activity should a protein or polypeptide have in order to qualify as one having “substantial fibrinogen binding activity”.

(b) Claim 25 lacks proper antecedent support for the recitation “a protein according to claim 1”. Claim 25 depends directly from claim 1 which, as amended, recites a protein, but not more than one protein. For proper antecedence, it is suggested that Applicants replace the recitation with --the protein according to claim 1--.

Remarks

15) Claims 1 and 25 stand rejected.

16) The Applicants’ amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

17) Papers related to this application may be submitted to Group 1600, AU 1645 by facsimile transmission. Papers should be transmitted via the PTO Fax Center located in Crystal Mall 1. The transmission of such papers by facsimile must conform with the notice published in the

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Official Gazette, 1096 OG 30, November 15, 1989. The CM1 facsimile center's telephone number is (703) 308-4242.

18) Any inquiry concerning this communication or earlier communication(s) from the Examiner should be directed to S. Devi, Ph.D., whose telephone number is (703) 308-9347. A message may be left on the Examiner's voice mail service. The Examiner can normally be reached on Monday to Friday from 7.15 a.m to 4.15 p.m. except one day each bi-week which would be disclosed on the Examiner's voice mail system.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, Lynette Smith, can be reached on (703) 308-3909.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-0196.

September 2001


S. DEVI, PH.D.
PRIMARY EXAMINER